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	First Named Inventor	Carlos Orlando Vilacha Zanoni
	Art Unit	3727
	Examiner Name	Nathan Jeffrey Newhouse
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#14

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Examiner: Nathan Jeffrey Newhouse

Group Art Unit: 3727

In re application of:

CARLOS ORLANDO
VILACHA ZANONI ET AL.

Serial No.: 09/745,098

Filed: December 20, 2000

**CROWN CLOSURE HAVING A
REDUCED RADIUS AND METHOD
OF MANUFACTURE**

Attorney Docket No. 286765-00001

REPLY TO EXAMINER'S ANSWER

July 17, 2003

Commissioner for Patents
MAIL STOP APPEAL BRIEF - PATENTS
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Dear Sir:

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This is in response the Examiner's Answer, dated May 30, 2003, the time for response being before July 30, 2003

Argument

In the Examiner's Response addressing the rejection of claims 1-12 under 35 U.S.C. §102(b) as being anticipated by *Leenaards*, U.S. Pat. No. 3,827,594, the Examiner states that, "*Leenaards*, as shown in figures 2 and 5, teaches the crown closure having a curved portion that is the same shape as the mouth contour of the bottle prior to crimping." Appellants disagree. As shown in figures 2 and 5, the radius of curvature for the outer edge of the mouth is much smaller than the radius of curvature of the crown. It is this difference in the curvature radii that creates the

“annular clearance,” *see*, Col. 4, lines 3-4, between the mouth and the crown identified by the reference number 18. This space is created to accommodate the liner which is placed between the closure and the bottle.

Applicant is at a loss as to how the Examiner can contend that two structures, the crown closure and the bottle, which are in contact at one point and which are further shaped to create an “annular clearance” therebetween have the “same shape.” Moreover, it is this difference in the curvature radii that creates the problem that the present invention overcomes, namely, the crown shifting on the bottle prior to crimping.

The Examiner has further asserted that because Applicant’s invention includes a liner while allowing the closure to have the same shape as the mouth contour, the liner of the *Leenaards* crown closure does not prevent the *Leenaards* crown closure from having the same shape as the mouth contour. The Examiner, however, fails to note that the liner of the present invention is structured to engage the inner edge of the mouth of the bottle. As such, the liner of the present invention does not come between the crown closure and the bottle. The liner of the *Leenaards* crown closure is placed in the “annular clearance” and, as such, prevents the crown closure from having the same shape as the contour of the bottle.

With regard to the rejection of claims 13 and 14-16 under 35 U.S.C. §103(a), the Examiner has cited *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir 1992) for the proposition that “obviousness can only *be established* by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found in either the references themselves or in the knowledge generally available to one of ordinary skill in the art.” The Examiner, however, has not applied the standard set forth in the cases cited in the Response.

In *Fine*, the court initially notes that the PTO has the burden of establishing a *prima facie* case of obviousness and further states that, “this burden [can be satisfied] only by *showing* some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references.” 5 USPQ2d at 1598 (emphasis added). The

court then noted that the Examiner in that case had failed to show the requisite teaching or suggestion in the cited references and that the Examiner's "bald assertion" without any support or explanation did not satisfy the PTO's burden. *See*, 5 USPQ2d at 1599. Similarly, the court in *Jones*, which cited *Fine* to establish the rule, noted that because the PTO failed to present any evidence that one skilled in the art would have been motivated to combine the cited references, the PTO did not establish a *prima facie* case of obviousness. *See*, 21 USPQ2d at 1944.

Here, the rejections under 35 U.S.C. §103(a) are improper because the Examiner has not *shown* that there is a suggestion that the cited references should be combined. The Examiner, essentially, admits that there is no teaching or suggestion of combination set forth *in* the references and merely states that "it would have been obvious" to combine the cited references. Response at 4. This statement, however, is a bald assertion that has not been supported by any evidence. The Examiner's error is rooted in the misinterpretation of the rule set forth in *Fine*. That is, the Examiner contends that "obviousness can only *be established* by combining or modifying the teachings of the prior art." However, *Fine* actually states that the PTO's burden can be satisfied only by *showing* that knowledge generally available to one of ordinary skill would lead to the combination of the relevant teachings of the references. In this application, as in *Jones*, because the Examiner has failed to present any "*evidence*, other than the PTO's speculation (if it can be called evidence) that one skilled in the art would have been motivated [to combine the references]" 21 USPQ2d at 1944 (emphasis in original). Accordingly, "the PTO did not establish a *prima facie* case of obviousness...." *Id.*

Summary And Conclusion

It is again submitted that claims 1-12 are not anticipated by *Leenaards*. It is further submitted that Claim 13 is patentable over *Leenaards* in view of *Ferngren*. It is further submitted that claims 14-16 are patentable over *Leenaards* in view of *Myer*. Therefore, Applicant requests that the Board reverse the Examiner's rejections of Claims 1-16 and remand the application to the Examiner for the issuance of a Notice of Allowance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. C. Jenkins', with a stylized flourish at the end.

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